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No. 82-2024

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

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JOHN EARLY and STEPHEN EARLY,
*Petitioners,*

v.

EASTERN TRANSFER, and FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN AND PACKERS, TEAMSTERS LOCAL 82, *et al.*,
*Respondents.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit**

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## RESPONDENTS LOCAL UNION 82, BART GRIFFITHS' AND GEORGE HARRIS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## RESPONDENTS LOCAL UNION 82, BART GRIFFITHS' AND GEORGE HARRIS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## STATEMENT OF THE CASE

### A. Facts

Petitioners, John and Stephen Early, were employees of Respondent, Eastern Transfer, and members of Respondent Furniture Movers Local Union 82.[1] On June 6, 1981, Petitioners left their work positions before completing their jobs and without obtaining permission from their employer. (A-2, B-2)[2] When they reported to work

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[1] Petitioners were plaintiffs below, while Respondents here were defendants.

[2] All references are to the Appendix attached to the Petition for a Writ of Certiorari, unless otherwise noted.

the next morning, they were discharged, along with three other employees who had also left their job assignments the previous evening without their employer's permission. (A-2, B-2) On the day of the discharge, officials of Local 82 and Eastern Transfer met informally, pursuant to steps one and two of the grievance procedure contained in the collective bargaining agreement between the union and employer. (B-2) The penalty of one of the five discharged employees was reduced to a one-week suspension because, on the day of his discharge, he had worked for three hours longer than had the Petitioners. (A-2) The company refused to modify its decision to discharge the four other employees. These employees, including the Petitioners, filed formal grievances with Local 82, pursuant to the procedure set forth in the collective bargaining agreement. (B-2)

According to that agreement, these grievances were heard by a four member joint labor-management committee.[3] (B-2) The two Union representatives were Respondent George Harris, then President of Local Union 82, and Stephen Cullen, at that time an employee of the Eastern Conference of Teamsters. (B-2, B-3 n.2) Respondent Bart Griffiths, Secretary-Treasurer of Local 82, represented the Petitioners before the joint committee and both lower courts found that he fulfilled his obligation to Petitioners as their bargaining representative. (A-3-4, B-5-9)[4] Griffiths did not present every argument requested by the

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[3] The collective bargaining agreement provided that grievances not settled by informal meetings between representatives of the Union and the Company were to be heard by a joint committee consisting of equal members of union and employer representatives, with the latter from firms other than the employer against whom the grievance was filed. If the committee deadlocked, the matter proceeded to arbitration; otherwise, the committee's decision was "final and binding on the parties." (B-2 n.1; C-1-4)

[4] Petitioners do not challenge those findings in their Petition. (Pet. at 7) Their assertion that Griffiths put forth a "relatively weak defense" (Pet. at 5) is not supported by the record.

Petitioners, including their contention that the collective bargaining agreement permitted employees to leave work without permission on the weekends. However, John Early presented this argument, among others, in reading a prepared statement. (A-3, B-2) Stephen Early also addressed the joint committee in his own behalf. (B-2) At the conclusion of the hearing, Petitioners stated that they believed the Union had properly represented them and that they had been provided the opportunity to submit all relevant evidence. (B-2) The joint committee upheld the discharges. (A-3, B-2)

**B. The Decisions Below**

Petitioners filed suit in the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. § 1336, and 29 U.S.C. §§ 157, 159, 185(a) and 412. They alleged that they had been discharged in violation of the collective bargaining agreement and that the Union had breached its duty of fair representation in processing their grievance. (A-1, B-1) Specifically, Petitioners asserted that Griffiths failed to properly represent them in presenting the grievance and that Harris, as a member of the joint grievance committee, had breached his duty to them by refusing to deadlock the case and send it to arbitration.

The district court granted all Respondents' motions for summary judgment and dismissed the action. (A-1) The court found that Petitioners failed to raise genuine issues of material fact regarding the representation provided by the Union in processing their grievance. (A-2)

The district court found the essence of Petitioners' claims to be their assertion that their interpretation of the collective bargaining agreement was so clearly correct that anyone disagreeing with that interpretation must be guilty of bad faith. (A-2) Yet the district court joined

Griffiths, Harris, Cullen and the joint grievance committee in rejecting Petitioners' contract interpretation. (A-3)[5]

The district court further found that Petitioners had not presented any evidence that the joint committee was arbitrary or biased. (A-3) The Petition misconstrues this aspect of the district court's decision. (*See*, Pet. at 6) The district court rejected Petitioners' contention that the union representatives on the joint grievance committee owed them a duty "to deadlock the committee and thereby assure the next contractual step of arbitration." (A-4 n.1) However, the court did not, as the Petitioners suggest, find that the union representatives had no obligation to avoid acting in an arbitrary or biased manner in considering the grievance. Rather, the district court held the committee to the standard utilized in reviewing decisions of third-party arbitrators, and concluded that the committee's decision was not evidence of its bias or arbitrariness, as Petitioners had alleged. (A-3)

The Court of Appeals for the First Circuit affirmed the district court's decision. That court held that Griffiths' conduct in preparing and presenting the grievance did not violate his duty of fair representation. (B-5-9) With regard to the joint committee's decision, the circuit court refused to impose a duty of partiality on the members of the joint committee. (B-14) It rejected Petitioners' assertion that the union representatives on the committee were analogous to a business agent deciding whether to send a case to arbitration. (B-13) The circuit court held that adoption of Petitioners' argument "would alter the character of the joint committee from that contemplated

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[5] At the January 25, 1982 hearing on Respondents' motions for summary judgment, the district court agreed with Respondents' interpretation of the relevant provision of the collective bargaining agreement, noting "I don't consider that this requirement of completing work assignments applies only in the week [as Petitioners had alleged]. Of course it applies on the weekend. I don't think it is close."

in the collective bargaining agreement" and erode its ability to render "final and binding" decisions as desired by the parties. (B-13-14) The court did not find any personal bias on the part of Harris. (B-10-12)[6] Finally, the court found no legal basis for insisting that joint committees provide written reasons for their decisions. (B-14-15)

## REASONS FOR DENYING THE WRIT

Petitioners have characterized their Petition as raising an issue never considered by this Court. (Pet. at 9) In fact, however, the issue presented in this case is merely a restatement of the question initially considered by this Court in *Driver's Union* v. *Riss & Co.*, 372 U.S. 517 (1963); specifically, the status of a decision rendered by a joint grievance commitee. The Court's position in *Riss* equating a joint committee's decision with that of a third party arbitrator was affirmed in *Humphrey* v. *Moore*, 375 U.S. 335 (1964), and has been consistently followed by this Court on every occasion it has had to consider the matter. *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976); *Barrentine* v. *Arkansas-Best Freight System*, 450 U.S. 728 (1981); *United Parcel Service* v. *Mitchell*, 451 U.S. 56 (1981); *DelCostello* v. *Teamsters*, 51 U.S.L.W. 4693 (U.S. June 8, 1983). This Court's position has been consistently followed, without criticism or dissent, by the circuit courts.[7]

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[6] Petitioners quibble with the circuit court's resolution of their assertion that Harris was biased against them, but do not challenge that factual finding before this Court. (Pet. at 8 n. 4)

[7] *E.g.*, *Teamsters Freight Employees* v. *Bowling Green Exp., Inc.*, 707 F.2d 254 (6th Cir. 1983); *Chicago Cartage Co.* v. *IBT*, 659 F.2d 825 (7th Cir. 1981); *Bell* v. *IML Freight, Inc.*, 589 F.2d 502 (10th Cir. 1979); *Teamsters Local Union No. 30* v. *Helms Express, Inc.*, 591 F.2d 211 (3d Cir.), *cert. denied*, 444 U.S. 837 (1979); *Walters* v. *Roadway Express, Inc.*, 557 F.2d 521 (5th Cir. 1977); *Warren* v. *IBT*, 544 F.2d 334 (8th Cir. 1976); *Local Freight Drivers Local 208* v. *Braswell Motor Freight*, 422 F.2d 109 (9th Cir.), *cert. denied*, 400 U.S. 827 (1970).

The question actually presented by the Petition is whether this Court should reverse its holding in *Riss* that a decision renderd by a contractually created joint grievance committee is entitled to the same deference as one rendered by an arbitrator, where the parties to the collective bargaining agreement have specified that a committee decision is to be "final and binding." That reversal issue has been before this Court previously, presented in an *amicus* brief filed in support of the petitioner in the *Hines* case.[8] It was rejected there and is no more meritorious here.

To change the manner in which joint committee decisions are treated by a reviewing court in the fashion suggested by Petitioners would deprive that grievance-resolution process of the finality envisioned by the contracting parties and transform it into a mere conduit on the way to third-party arbitration or economic warfare. And while Petitioners would have this Court believe that the joint grievance procedure is unique to the Teamsters Union and its affiliates, other unions and employers have contractually provided for the resolution of disputes in this manner. *See, e.g., Parks* v. *Int'l Bro. of Electrical Wkrs.*, 314 F.2d 886, 894 (4th Cir.), *cert. denied*, 372 U.S. 976 (1963). Were the Court to adopt Petitioners' position, it would abandon its longstanding, and correct, interpretation of the national labor policy as embodied in Section 203(d) of the National Labor Relations Act.[9]

Thus, the traditional criteria for this Court to grant a writ of certiorari are simply not present here.

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[8] *See, amicus* brief filed on behalf of PROD, Inc., et al. by Arthur L. Fox II, counsel to Petitioners in the instant case.

[9] Section 203(d), 29 U.S.C. § 173(d), provides:

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.

**A. The Decisions Below Do Not Conflict With the Decisions of This Court**

This Court has clearly established that the decisions of a joint grievance committee consisting of equal number of union and employer representatives are entitled to the same respect as the awards of neutral arbitrators. In *Drivers Union* v. *Riss & Co.*, 372 U.S. 517, this Court unanimously rejected the Sixth Circuit's determination that a joint committee decision was not the equivalent of an arbitration award and held that such an award, if intended to be "final and binding," was enforceable under § 301 of the Labor-Management Relations Act of 1947. This Court stated:

> If, as petitioners allege, the award of the Joint Area Cartage Committee is under the collective bargaining agreement final and binding, the District Court has jurisdiction under § 301 to enforce it . . . . It is not enough that the word 'arbitration' does not appear in the collective bargaining agreement, for we have held that the policy of the Labor Act 'can be effectuated only if the means chosen by the parties for the settlement of their differences under a collective bargaining agreement is given full play' . . . . Thus, if the award at bar is the parties' chosen instrument for the definitive settlement of grievances under the Agreement, it is enforceable under § 301. And if the Joint Area Cartage Committee's award is thus enforceable, it is of course not open to the courts to reweigh the merits of the grievance. (372 U.S. at 519, citations omitted)

Shortly after *Riss*, this Court affirmed that a joint grievance committee was the equivalent of third party arbitration, if such was the intent of the contracting parties. In *Humphrey* v. *Moore*, 375 U.S. 335, the Court applied criteria traditionally utilized to review the propriety of an arbitrator's decision in determining that a joint committee had not exceeded its authority under the contract to resolve a seniority dispute. 375 U.S. at 347-48, 351. The Court implicitly rejected concurring Justice

Goldberg's argument that the joint committee, unlike an arbitrator, had authority to amend and modify the collective bargaining agreement. 375 U.S. at 353-55.[10]

In *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554, 557, this Court referred to a contractually created joint grievance committee as an "arbitration committee." In *Barrentine* v. *Arkansas-Best Freight System*, 450 U.S. 728, 734, 737, the joint committee procedure was termed "arbitration" and its rulings "arbitral decision[s]." In both *United Parcel Service* v. *Mitchell*[11] and *DelCostello* v. *Teamsters*[12] this Court considered the joint committee process to be the equivalent of third party arbitration.

Thus, the decisions below are entirely consistent with the prior holdings of this Court. Petitioners' assertion that this Court has not had the opportunity to consider whether joint grievance committees should be considered the equivalent of third party arbitrators is so patently incorrect as to be frivolous. (*See*, Pet. at 9) There exists no conflict with prior decisions of this Court to justify a grant of the Petition for a Writ of Certiorari in this case.

### B. The Decisions Below Do Not Conflict With Holdings of any Circuit Court of Appeals

There is no conflict among the circuit courts of appeal which have addressed the character of joint committee awards. The circuits have routinely followed the principles first articulated by this Court in *Riss* and have consistently held that the awards of joint labor-management committees are reviewable under the same standards as are awards of neutral arbitrators.

It would unnecessarily belabor the point to analyze each of the circuit court decisions which has affirmed

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[10] This Court has referred to the grievance panel in *Humphrey* v. *Moore* as a "joint arbitration committee" in subsequent cases. *E.g.*, *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. at 565.

[11] 451 U.S. 56.

[12] 51 U.S.L.W. 4693 (U.S. June 8, 1983).

this principle. Some of them have been noted previously in footnote 7. *See*, p. 5, *supra*. Yet Petitioners cite isolated dicta in several decisions which have suggested that the joint committee procedure is susceptible to misuse. (Pet. at 13)[13] Neither those comments nor those of the president of the American Arbitration Association[14] provide cause for this case to be reviewed by this Court. Moreover, neither the record of this case nor other published sources have been cited to support the Petitioners' allegations of misuse of the joint committee process.

In short, the decisions of the lower courts in this case are entirely consistent with those of other circuit courts of appeal and reflect the prevailing view that the joint committee procedure is a suitable substitute for third-party arbitration, if such is the intent of the contractual parties.

### C. Acceptance of the Petitioners' Theory Would Be Contrary to the Federal Labor Policy

This Court recognized, in *Howard Johnson Co.* v. *Hotel Employees*, 417 U.S. 249, 355 (1974), that the federal courts' proper role under § 301 of the NLRA is to fashion the federal law of collective bargaining "from the policy of our national labor laws." The federal labor policy concerning dispute resolution procedures embodied in collective bargaining agreements is set forth in § 203(d) of the Act, 29 U.S.C. § 173(d):

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[13] Of course, the same can, and has, been said of the arbitration process. *E.g.*, Hays, *Labor-Arbitration—A Dissenting View* (1966), p. 61. Indeed, there are those who have even suggested that the judicial process is not infallible. Frankfurter & Greene, *The Labor Injunction* (1932).

[14] Pet. at 10 n. 8. It is hardly surprising that the American Arbitration Association is not enthralled with a procedure which saves the parties from the expenses related to third-party arbitration, with the consequent adverse impact on the earnings of the practitioners of that occupation.

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.

Thus, this Court has held that courts have a limited role in reviewing arbitration awards rendered under the terms of a collective bargaining agreement, noting "that the federal policy of settling labor disputes by arbitration would be undermined if the courts had the final say on the merits of the award." *United Steelworkers* v. *Enterprise Corp.*, 363 U.S. 593, 596 (1960).

As previously noted, the deference paid to the intent of the parties as expressed in the collective bargaining agreement has been extended to joint grievance committees by the *Riss* decision and its progeny. In *United Mine Workers Health & Retirement Funds* v. *Robinson*, 455 U.S. 562, 576 (1982), this Court reaffirmed that the judiciary is without authority to modify the substantive terms of a collective bargaining agreement "when neither the collective bargaining process nor its end product violates any command of Congress. . . ."

Yet adoption of Petitioners' position would set aside the method agreed upon by the parties to settle grievances arising under the collective agreement, despite the fact that said procedure is consistent with the federal labor policy. The contract at issue in this case specifically provided that "a decision by a majority of any panel of the Joint Committee shall be final and binding on the parties and employees involved." (C-2) Petitioners would have that language judicially modified to require union representatives to prevent a grievance from being finally resolved by the joint committee, if the committee's decision were adverse to the employee grievant. It is clear from the contract's terms that it was obviously not the intent of the parties to have the union representative on the joint committee act as an advocate for

the grievant in order to ensure arbitration of every claim.[15] Indeed, as Chief Justice Burger has noted, contractual parties often intentionally adopt joint committee procedures in order to *avoid* the costly and time consuming process of having grievances resolved by third parties, rather than by "shop stewards, business agents, managerial supervisors, and the traditional ad hoc panels of fact finders." *Barrentine* v. *Arkansas-Best Freight, Inc.*, 450 U.S. at 747, 48 (Burger, dissenting).

Lower courts have also recognized that a union representative on a joint grievance committee has a responsibility, vested in him by the collective bargaining agreement, to resolve a grievance in the manner agreed to by the parties. *Difini* v. *Spector Freight Systems*, 101 L.R.R.M. 3055, 3058 (E.D.N.Y. 1979). The role assigned the union representative on a joint grievance panel is that of an arbitrator, not an advocate. This Court has recognized the duty owed by a representative on a benefit trust fund to that fund transcends his responsibilities to the interests of the party that appointed him. *NLRB* v. *Amax Coal Co.*, 453 U.S. 322, 334 (1981). That principle also must be applied to joint grievance committee representatives if that procedure for resolving industrial disputes is to have continued validity.

Acceptance of that proposition does not, as Petitioners assert, leave the individual grievant unprotected from the irresponsible actions of panel members. It is well-established that members of a joint arbitration committee are bound by the same standards as are neutral arbi-

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[15] It should be noted that not every grievance procedure provides for arbitration in the event the joint committee deadlocks. Many, if not most, permit the parties to resort to the economic weapons available. *See, e.g., Local Freight Drivers Local 208* v. *Braswell Motor Freight*, 422 F.2d at 113. Thus, adoption of Petitioners' standards, although leading to arbitration in this case, could force unions to resort to their economic weapons to enforce the demands of member-grievants in a majority of cases.

trators.[16] *Morris* v. *Werner-Continental, Inc.*, 466 F.2d 1185, 1190-91 (6th Cir. 1972), *cert. denied*, 411 U.S. 965 (1973). Accordingly, a joint committee's decision will not be upheld if it involves "fraud or bad faith or demonstrated bias or collusion." *Id.* at 1190-91. Thus, there is no basis for Petitioners' claim that the joint grievance committee procedure is beyond the scope of judicial review. (Pet. at 10, 12)[17]

Thus, the Petition does not present a significant federal question involving public policy concerns warranting the attention of this Court. Indeed, adoption of Petitioners' position would be detrimental to the declared federal labor policy favoring grievance resolution by means determined by the parties to a collective agreement.

## CONCLUSION

For the foregoing reasons, it is respectfully suggested that the Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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[16] Petitioners apparently recognized this fact in drafting their complaint since paragraph 27 alleges that the union representatives on the joint committee "were unlawfully biased or partial, guilty of misconduct, exceeded their powers under the contract, and disregarded the terms of said contract . . . ."

[17] Indeed, both *Hines* and *Barrentine* involved reviews of joint committee decisions.